

## **REMARKS**

### **I. The Rejection**

Claims 1, 2, 4 – 6 and 9 -13 have been rejected under 35 U.S.C. § 103(a) as being obvious compared with U.S. Patent No. 5,589,892 – Knee (hereafter “Knee”) in view of U.S. Patent No. 6,536,041 – Knudson (hereafter “Knudson”).

Claims 3, 7, 8 and 14 -15 have been rejected under 35 U.S.C. § 103(a), as being similarly unpatentable over Knee ‘892 in view of Knudson and further in view of U.S. Patent No. 6,035,304 – Machida (hereafter “Machida”).

### **2. The Rejection Under 35 U.S.C. 103(a) Based on Knee Plus Knudson**

In the Final Rejection, the Examiner relies on a newly cited reference (Knudson) under a new grounds of rejection (35 U.S.C. § 103(a) – obviousness). In order to clarify just what is “concatenated” according to Applicant’s claims, the claim terminology has been revised to follow the description of the invention appearing at page 17 of the Specification where the language “partial dynamic summary” is used.

With that in mind, the present claim 1 recites “transmitting successive partial dynamic summaries relating to disjoint times of an event”. The content of such a partial dynamic summary depends on the content of the event occurring since the transmission of the previous partial dynamic summary up to the instant of transmission of the current partial dynamic summary. The upgradeable summary of the event is the result of the concatenating of the successive partial dynamic summaries.

It is submitted that the underlined features are not disclosed or suggested by Knee and are similarly neither disclosed nor suggested by Knudson..

In each of the cited references, new updated data replaces old update data and therefore the data cannot be a "partial dynamic summary relating to disjoint times of the event" and, furthermore, the "concatenating of the partial dynamic summaries" is not provided as is required by the present claims of this application.

Knee discloses an electronic program schedule or guide (EPG) system, which provides a user with schedule information for programs viewed by the user on a television receiver. The electronic program guide has an improved sports mode that "provides access to sports related program schedule information, updated game scores, detailed team-specific and other sports information, and interactive services such as the purchase of sports merchandise and access to sports video games." Column 41, lines 58 and following. Each item of information is accessible for display on a specific line on the EPG menu. By viewing figure 48 and column 42, line 36, we see that "Line 501 displays program schedule information for sports related programs. Line 502 displays information on important games and line 503 displays information on news items of particular interest. --- line 504 is used for displaying information on products available for remote ordering." Other kinds of displayed information are the "score by quarters (for a basketball or football game), score by inning (for a baseball game), high scorers". Knee states, "--the information for lines 502 and 503 (and optionally 504) are obtained from data feeds received at the user location "(i.e. supplied from the transmission station) (col. 42, line 47 and following).

Knee does not disclose transmitting a succession of partial dynamic summaries of an event (what happened since the previous partial dynamic summary was sent) which are "concatenated" in "a memory of the receiver" to provide an "upgradeable summary of the event". The transmitted information according to Knee relates either to the complete event (the name of the teams, the best scorers), or some additional later occurring information (score by

quarters, score by inning) that stands on its own. Information that concerns the complete event and several later occurring pieces of information are not concatenated with other “partial dynamic summaries” for forming a complete summary of the information at the receiver. The information transmitted by the broadcast network (or other transmitter) and retrieved in the receiver is only displayed in different boxes of a displayed menu. To the contrary of our claimed invention, the information is not concatenated for forming the unique upgradeable summary information: an upgradeable summary of the event including a concatenation of all of the partial dynamic summaries previously transmitted.

It is therefore submitted that the invention recited by the present claim 1 is not taught or disclosed in Knee.

Knudson adds nothing that is relevant to Knee since, as the Examiner states, Knudson merely transmits “updated sports scores” that are sent “at a regular interval”. There is no attempt to concatenate anything in Knudson. It is therefore submitted that claim 1 is also patentable over any combination of Knee and Knudson.

The Examiner notes that Knudson transmits “an updated version” of information. The present claims require transmitting partial dynamic summaries which are then concatenated at the receiver to produce a desired complete summary.

The non-disclosed features as pointed out above are also in the independent claims 4, 9 and 12. For the same reasons as set forth above, these independent claims are patentable in view of the cited prior art.

It is submitted that dependent claims 5 and 6 (dependent on claim 4), claims 10 and 11 (dependent on claim 9) and claim 13 (dependent on claim 12) are also patentable by their dependency from patentable base claims 4, 9 and 12, respectively.

### **3. The Rejection Under 35 U.S.C. 103 Based on Knee ‘982 in view of Machida ‘304**

Claims 3, 7, 8 and 14-15 stand rejected under 35 U.S.C. §103(a) as being anticipated by Knee in view of Knudson and further in view of Machida.

The Machida patent relates to a multimedia application storage and player for storing distributed application packages. A broadcast network transmits the application by packages AID<sub>1</sub>, AID<sub>2</sub> ... AID<sub>L</sub>. During execution, the downloaded application is also linked with information such as Name, Sex, Birth date, taste factor, Category, Count etc. associated with the user (see column 13, line 58). A program inside the receiver calculates a correlation between the key word of the receiver and words encapsulated in data packages. A version attribute, which is a number that "is changed ----- each time a user uses any application" (col. 24, line 63) allows the update of words in a data package. Figure 71 shows the processing for displaying information. The CPU displays a message "Version V (not updated)" if the version number last seen by the user coincides with the version number in storage (see column 25, lines 5 to 20). Otherwise, a different action is taken by the system.

The Machida patent does not disclose or suggest that partial dynamic summaries of an event are transmitted, that the content of a partial dynamic summary depends on the content of the event occurring since the transmission of the previous partial dynamic summary up to the instant of transmission of the current partialdynamic summary, and that the upgradeable summary of the event is the result of the concatenating of the successive partial dynamic summaries. Machida does not disclose that the information processed in the receiver is concatenated in the manner claimed in the present application. On the contrary, the information in Machida is updated only when a version is called up and it is not the same as was previously viewed by that user. Each old version is erased when a new version is read into the user's storage medium.

In relying upon Machida to reject claims 3, 7, 8, 14 and 15, the Examiner states:

"Machida discloses an EPG system in which the EPG data has time and data (?) information, as well as a version attribute 130, a STB utilizes this

information to determine how “fresh” the data is (column 14, lines 30-44, column 24, line 60-column 25, line 19”).

The Examiner concludes:

“Therefore, it would have been obvious --- to modify Knee to utilize the version attribute of Machida thus enabling a user to keep track of when a version of the data was received to track the progress of a sporting event.

Machida does not disclose if the version numbers are consecutive.

The Examiner takes official notice that the use of consecutive version numbers is known.

----- Therefore it would have been obvious to modify the combination of Knee and Machida to utilize consecutive version numbers in order to make it easier for a user to track the version history of the supplied data.”. Contrary to the Examiner’s conclusion above, none of Knee, Machida or the presently claimed invention is concerned with “mak(ing) it easier for a user to track the version history of the supplied data”.

Machida’s system is concerned only with keeping a record of which version of information was accessed by a particular user on the last occasion when such information was accessed and replacing old information with new when it is found that the preceding access was with respect to a different version of the information.

This is not what is presently claimed, as is pointed out above. It is therefore submitted that the invention recited by the present claim 1 is not taught or disclosed in Knee taken alone or in combination with Knudson and Machida.

### **3. (a). Proper Basis for Rejections Under 35 U.S.C. § 103(a)**

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the teachings of a plurality of references. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or

suggest all of the claim limitations. The teaching or suggestion to make the claimed invention and the reasonable expectation of success must both be found in the prior art, and not based on the applicant's own disclosure. *In re Vaeck*, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

The examiner bears the burden of establishing a *prima facie* case of obviousness and "can satisfy this burden only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references." *In re Fine*, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988). To support a conclusion that a claimed combination is obvious, either: (a) the references must expressly or impliedly suggest the claimed combination to one of ordinary skill in the art, or (b) the examiner must present a convincing line of reasoning as to why a person of ordinary skill in the art would have found the claimed invention to have been obvious in light of the teachings of the references. *Ex parte Clapp*, 227 U.S.P.Q. 972, 973 (Bd. Pat. App. & Inter. 1985). Where the teachings of various references conflict, the examiner must weigh the power of each reference to suggest solutions to one of ordinary skill in the art, considering the degree to which one reference might accurately discredit another. *In re Young*, 18 U.S.P.Q.2d 1089 (Fed. Cir. 1991).

### **3. (b). The §103(a) Rejections Are Not Properly Made Out**

The action does not make out a *prima facie* case of obviousness with respect to the pending claims. The § 103(a) rejections of the claims are based on the combination of Knee in view of Knudson or Knee in view of Knudson and Machida. There is nothing, however, in Knee, Machida or Knudson which would lead a person of ordinary skill to combine anything in these references to arrive at the presently claimed combinations of elements. In addition, there is nothing which supports a *prima facie* case of obviousness of any of the independent claims or any of the dependent claims.

The law mandates that a reference must be considered for all that it teaches, not just some part that supports a particular position. *In re Hedges*, 228

U.S.P.Q. 685, 687 (Fed. Cir. 1986). The examiner cannot simply pick and choose those portions of the reference which support his position and ignore those portions that do not. *Id.* Thus, the examiner is not free to discard the Machida patent teachings that relate to the “version” information being a record, not of what is taking place in an “event” that is being received, but rather relate to actions by the user “each time a user uses any application” (see col. 24, line 63). It can therefore readily be seen that the disclosure in Machida of “versions” is in no way combinable with Knee or Knudson to render the presently claimed invention(s) obvious.

There is simply nothing in Knee or Knudson or Machida which would lead anyone to adopt the use of Machida’s teachings into either or both of the other references, absent motivation in the applied references to do so and a reasonable expectation of success for some useful purpose.

From the teachings and disclosure in the Machida patent, one skilled in the art simply is not aware that there is any reason to be concerned with storing “versions” in Knee or Knudson. Without such an awareness, the skilled artisan would not be motivated to modify the teachings of the Knee or Knudson to somehow combine them with Machida

It is respectfully submitted that the suggested combination can be motivated solely by hindsight reasoning guided by the applicant’s own disclosure — reasoning that is expressly forbidden during the examination of a claim under § 103(a). *In re Gorman*, 18 U.S.P.Q.2d 1885, 1888 (Fed. Cir. 1991); *In re Fritch*, 23 U.S.P.Q.2d 1780, 1784 (Fed. Cir. 1992). Accordingly, reconsideration and withdrawal of the rejection under § 103(a) are respectfully requested.

The non-disclosed features as pointed out above are also in the independent claims 4, 9 and 12. For the same reasons as set forth above, these independent claims are patentable in view of the cited prior art.

It is submitted that claims 6-8, 10-12, 13-15 are also patentable, at least by their dependency from patentable base claims 4, 9 and 12, respectively.

Having fully addressed the Examiner’s rejections it is believed that, in view of the preceding amendments and remarks, this application stands in

condition for allowance. Accordingly, reconsideration and allowance are respectfully solicited.

Significant additional distinguishing features are also contained in others of the dependent claims but, in view of the total lack of significant elements of the independent claims in either cited reference, as pointed out above, claims 1 – 15 of this application are respectfully submitted to be in condition for allowance, which action is requested.

**CONCLUSION**

In view of the foregoing, reconsideration and withdrawal of all of the rejections and allowance of all pending claims 1 –15 are respectfully requested.

Respectfully submitted,



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